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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Parts 181 and 191

CBP Dec. 15-11

RIN 1515-AE02

**LIBERALIZATION OF CERTAIN DOCUMENTARY EVIDENCE REQUIRED AS
PROOF OF EXPORTATION ON DRAWBACK CLAIMS**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations by removing some of the requirements for documentation used to establish proof of exportation for drawback claims. Currently, claimants must provide originally signed documentary evidence or a certified copy of such documentary evidence to establish the date and fact of exportation of articles for drawback purposes. This document also amends various sections of title 19 of the Code of Federal Regulations (CFR) to reflect that there is no longer a legal requirement that the export invoice for mail shipments be certified. Additionally, this document amends Appendix B to part 191 of title 19 so that the Appendix reflects previous regulatory amendments closing four drawback offices. Finally, this document amends CBP regulations to reflect the change from the legacy agency name of U.S. Customs Service to the current agency name of U.S. Customs and Border Protection and to make other non-substantive editorial changes.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For legal aspects, Carrie L. Owens, Chief, Entry Process & Duty Refunds Branch, Regulations and Rulings, Office of International Trade, (202) 325-0266. For operational aspects, Celestine L. Harrell, Chief, Post Release and Trade Processes Branch, Office of International Trade, (202) 863-6937.

SUPPLEMENTARY INFORMATION:

Background

This document amends the U.S. Customs and Border Protection (CBP) regulations by:

- (1) removing some of the requirements for drawback claimants to establish proof of exportation;
- (2) conforming Appendix B to part 191 of the CBP regulations to previous regulatory changes reflecting the closing of four drawback offices; (3) updating the regulations to reflect that CBP is now part of the Department of Homeland Security; and (4) making other non-substantive editorial and nomenclature changes.

Easing the Requirements for Establishing Proof of Exportation

This document amends title 19 of the Code of Federal Regulations (19 CFR) by making amendments to 19 CFR Parts 181 and 191, specifically, sections 19 CFR 181.47, 191.72 and 191.74 to align CBP documentation requirements with current business practices related to the documents used to establish the date and fact of exportation for purposes of drawback. In order to qualify for drawback, claimants must establish that articles are exported or destroyed. When drawback is claimed for exported goods, the claimant must submit documentation that establishes fully the date and fact of exportation and the identity of the exporter. See 19 CFR 191.72. For certain types of drawback claims subject to the North American Free Trade

Agreement (NAFTA), documentation must also establish the identity and location of the ultimate consignee of the exported goods. See 19 CFR 181.47 (b)(2)(ii)(G).

The documents for establishing exportation include, but are not limited to: a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest. See 19 CFR 191.72(a). If the export is a mail shipment, vessel supply, or transfer to a foreign trade zone, other procedures to establish exportation may apply. See 19 CFR 191.72 (c)-(e). Current CBP regulations specify that the documents listed in paragraph (a) must be either originally signed or certified copies thereof. See 19 CFR 191.72(a). Additionally, certain claims subject to NAFTA require that the claimant produce an originally signed document or a certified copy of such document. See 19 CFR 181.47(b)(2)(ii)(G).

Acquiring pen and ink signatures for the original documentation or certified copies of such documentation is time consuming and often unrealistic for the trade. CBP realizes the difficulty of having to provide a pen and ink signature for documents when these documents are issued electronically and do not contain an actual pen and ink signature. As a consequence, drawback claims are often denied when claimants can produce only documentary evidence that does not contain a signature or copies of such documents that are not certified.

As such, CBP is amending its regulations by removing the requirement that the documentary evidence that establishes the date and fact of exportation for drawback eligibility be originally signed or that any copy of such documentary evidence must be certified. CBP will now allow claimants to provide unsigned originals or copies of documentary evidence as proof of export for drawback eligibility. Therefore, copies of original documentary evidence will no longer need to be certified.

Additionally, pursuant to 19 CFR 191.72(c), CBP currently requires a certified export invoice for mail shipments and references section 191.74. Even though section 191.72(c) cites to section 191.74 as a reference for the “certified export invoice” requirement for mail shipments, the regulatory text of 19 CFR 191.74 does not require a claimant to submit a certified copy of the export invoice, but only requires that the claimant provide the official postal records. There is no reference to “export invoice” in section 191.74. Further, the only reference to “certification” is in the title heading to section 191.74. Accordingly, CBP is removing the phrase “Certification of” from the heading text to section 191.74 as it is misleading as to what that regulation requires. Thus, CBP is clarifying that claimants submitting postal records in support of exportation in accordance with section 191.74 may submit either originals or uncertified copies of official postal records by clearly stating that within the text of section 191.74. Further, CBP is revising section 191.72(c) to accurately reflect the plain language of section 191.74 by requiring evidence of official postal records (originals or copies) that demonstrate exportation by mail.

Other non-substantive editorial changes to reflect the plain English mandate are made to these regulatory sections, 19 CFR sections 181.47, 191.72 and 191.74.

Conforming Amendments

CBP inadvertently failed to remove from Appendix B to part 191 references to certain drawback offices when the agency previously amended the regulations to close four drawback offices. Three drawback offices were closed in 2003 (Boston, MA; New Orleans, LA; and Miami, FL) and one in 2010 (Long Beach, CA). See Consolidation of Customs Drawback Centers: Final rule, 68 FR 3381, dated January 24, 2003; and Further Consolidation of CBP Drawback Centers: Final rule, 75 FR 24392, dated May 5, 2010. Accordingly, this document amends Appendix B, Sections II through V within part 191 of 19 CFR to reflect the closure of

those four drawback offices by removing the reference to eight drawback offices and by removing the references to the locations of the four closed offices (that is, Boston, MA; Long Beach, CA; Miami, FL; and New Orleans, LA).

Nomenclature Changes

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Public Law 107-296, 116 Stat. 2135). Accordingly, as of March 1, 2003, the former U.S. Customs Service of the Department of the Treasury was transferred to DHS and reorganized to become CBP. Accordingly, this document further amends § 181.47 to reflect the change from the legacy agency name, U.S. Customs Service, to the current name, U.S. Customs and Border Protection or CBP.

Discussion of Changes

Part 181

Section 181.47 of the CBP regulations (19 CFR 181.47) pertains to the documents required for a NAFTA drawback claim. Paragraph (b)(2)(ii)(G) of § 181.47 is amended by removing the requirement that copies of the exemplar documents in that paragraph be certified.

In addition, section 181.47 contains the legacy agency name of Customs. Accordingly, § 181.47 is amended to remove the outdated information and replace it with the current agency name CBP in §§ 181.47(b)(2), 181.47(b)(2)(i)(A), 181.47(b)(2)(i)(B), 181.47(b)(2)(i)(F), 181.47(b)(2)(ii)(A), 181.47(b)(2)(ii)(B), 181.47(b)(2)(ii)(C), 181.47(b)(2)(ii)(D), 181.47(b)(2)(ii)(E), 181.47(b)(2)(iii)(A), 181.47(b)(2)(iii)(B), and 181.47(b)(2)(iii)(D). Additionally, the word “shall” is replaced with either “must”, “will” or “is”, as appropriate, in paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(i)(E), (b)(2)(ii), (b)(2)(ii)(B), (b)(2)(ii)(G), (b)(2)(ii)(H), (b)(2)(iii), (b)(2)(iv), (b)(2)(v), and (c) of § 181.47 to conform with the plain English mandate.

Part 191

Section 191.72 of the CBP regulations (19 CFR 191.72) pertains to exportation procedures for drawback. Section 191.72(a) is amended by removing the terms “originally signed” and “certified” from the list of acceptable documentary evidence for establishing the date and fact of exportation for drawback eligibility. Section 191.72(c) is revised to reflect the requirements of section 191.74 and to reflect that the postal records for export shipments no longer have to be certified. Section 191.74 is amended by removing the words “Certification of” from the heading text because the text of 191.74 does not require a claimant to submit a certified copy of the postal record and the title heading cannot impose a legal requirement that is not also reflected in the regulatory text. CBP is also making it clear that claimants may submit either originals or copies of official postal records by adding the parenthetical phrase “(originals or copies)” after the phrase “official postal records” in section 191.74.

This document also makes non-substantive amendments to Appendix B, Sections II through V within part 191 of 19 CFR as discussed above.

Inapplicability of Notice and Delayed Effective Date

Because the amendments in parts 181 and 191 of 19 CFR set forth in this document merely relieve a burden on the public and the amendments to the Appendix of part 191 conform the regulations to previous regulatory changes to reflect the consolidation of drawback offices, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds good cause for dispensing with the requirement for a delayed effective date.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12866

These amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866, as supplemented by Executive Order 13563.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of his delegate) to approve regulations concerning drawback.

List of Subjects

19 CFR Part 181

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 191

Claims, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE CBP REGULATIONS

For the reasons set forth above, parts 181 and 191 of the CBP Regulations (19 CFR parts 181 and 191) and Appendix B to part 191 of 19 CFR are amended as set forth below:

PART 181 - NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

* * * * *

§ 181.47 [Amended]

2. In § 181.47:

a. Paragraph (a) is amended by:

(i) In the first sentence, by removing the word “shall” and adding, in its place, the word “will”;

(ii) In the second sentence, by removing the word “shall” each place it occurs and adding, in its place, the word “must”; and

(iii) In the third sentence, by removing the word “shall” and adding, in its place, the word “will”;

b. Paragraph (b)(1) is amended by removing the word “shall” each place it occurs and adding, in its place, the word “must”;

c. Paragraph (b)(2) introductory text is amended by removing the word “Customs” and adding, in its place, the term “CBP”;

d. Paragraph (b)(2)(i) is amended by removing the word “shall” and adding, in its place, the word “must”;

e. Paragraphs (b)(2)(i)(A), (b)(2)(i)(B) and (b)(2)(i)(F) are amended by removing the word “Customs” and adding, in its place, the term “CBP”;

f. Paragraphs (b)(2)(i)(E) and (b)(2)(ii) introductory text are amended by removing the word “shall” and adding, in its place, the word “must”;

g. Paragraph (b)(2)(ii)(A) is amended by removing the word “Customs” and adding, in its place, the term “CBP”; and by removing the word “shall” and adding, in its place, the word “must”;

h. Paragraph (b)(2)(ii)(B) is amended by:

(i) Removing the first and third occurrence of the word “Customs” and adding, in its place, the term “CBP”;

(ii) Removing the second occurrence of the word “Customs” and adding, in its place, the words “the CBP-assigned”; and

(iii) Removing the word “shall” and adding, in its place, the word “must”;

i. Paragraphs (b)(2)(ii)(C), (b)(2)(ii)(D) and (b)(2)(ii)(E) are amended by removing the word “Customs” and adding, in its place, the term “CBP”;

j. Paragraph (b)(2)(ii)(G) is revised;

k. Paragraph (b)(2)(ii)(H) is amended by removing the phrase “shall be” and adding, in its place, the word “is”;

l. Paragraph (b)(2)(iii) is amended by removing the word “shall” and adding, in its place, the word “must”;

m. Paragraphs (b)(2)(iii)(A), (b)(2)(iii)(B), and (b)(2)(iii)(D) are amended by removing the word “Customs” each place it appears and adding, in its place, the term “CBP”;

n. Paragraph (b)(2)(iv) is amended by:

(i) Removing the first occurrence of the word “shall” and adding, in its place, the word “will”; and

(ii) Removing the second occurrence of the word “shall” and adding, in its place, the word “must”;

o. Paragraph (b)(2)(v) is amended by removing the word “shall” and adding, in its place, the word “will”; and

p. Paragraph (c) introductory text is amended by removing the word “shall” and adding, in its place, the word “must”.

The revision reads as follows:

§ 181.47 Completion of claim for drawback.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Evidence of exportation. Acceptable documentary evidence of exportation of goods to Canada or Mexico may include originals or copies of any of the following documents that are issued by the exporting carrier: bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, and cargo manifest. Supporting documentary evidence must establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

* * * * *

PART 191 - DRAWBACK

3. The general authority citation for part 191 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

§ 191.72 [Amended]

4. In § 191.72:

a. The introductory paragraph is amended by removing the word “shall” and adding, in its place, the word “must” in the first two sentences; and

b. Paragraphs (a) and (c) are revised to read as follows:

§ 191.72 Exportation procedures.

* * * * *

(a) Documentary evidence of exportation (originals or copies) issued by the exporting carrier, such as a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest;”.

* * * * *

(c) Official postal records (originals or copies) which evidence exportation by mail (§ 191.74);

* * * * *

§ 191.74 [Amended]

5. In § 191.74:

a. The section heading is revised;

b. In the first sentence, add the parenthetical “(originals or copies)” after the phrase “the official postal records”; and

c. The last sentence is amended by removing the parenthetical “(see § 191.51(a))” and adding, in its place, the parenthetical “(see § 191.51(a))”.

The revision reads as follows:

§ 191.74 Exportation by mail.

* * * * *

Appendix B to Part 191 [Amended]

6. In Appendix B to Part 191, Sections II through V, under the headings titled, “CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED” remove the parenthetical “(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)” each place it appears and adding, in its place, the parenthetical “(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA)”.

R. Gil Kerlikowske

Commissioner
U.S. Customs and Border Protection

Approved: August 4, 2015

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

